

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8680 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1- Yes
2 to 5 - No

MACHHABHAI BAKORBHAI

Versus

STATE OF GUJARAT AND ANOTHER

Appearance:

MR BB OZA for Petitioners
MR.UDHAY BHATT, ASSTT. GOVT. PLEADER for Respondent
Nos.1 AND 2.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/01/98

ORAL JUDGEMENT (Per: C.K.Thakkar, J.)

This petition is filed against the order passed by the Special Land Acquisition Officer, Unit No.1, Vadodara on August 6, 1986, Annexure-A to the petition.

By said order, an application filed by the petitioner-land owner, under Sec.18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') to refer the matter to a competent Court came to be rejected.

.RS 2

#. The case of the petitioner is that he owned and possessed agricultural land bearing Survey No.62/5/C admeasuring 0-32-60 sq.mts. Said land was acquired for public purpose, namely for proposed bridge near Mahi river near Umeta. According to the petitioner, an amount of compensation for the land was assessed by the Land Acquisition Officer at Rs.10,106/-. Including solatium and interest, total amount of Rs.14,785/- was paid. According to him, said amount was meagre and considering the location of the land as also the amount of compensation which had been paid to the land owners in nearby locality in past, compensation fixed under award was grossly inadequate and hence, he applied to the Land Acquisition Officer to make reference to a competent court.

#. The Special Land Acquisition Officer (respondent No.2 herein), passed an order rejecting the application inter alia on the ground that when the amount of compensation was paid to the petitioner in May, 1986, he accepted it without any objection. It was, therefore, not open to him to request or to pray to refer the matter to a competent Court.

#. In our opinion, the order passed by the second respondent is clearly illegal and deserves to be quashed and set aside. When an application was made by the petitioner requesting him to refer the matter to a competent Court, it was incumbent on the part of the second respondent to refer the matter in accordance with the provisions of sec.18 of the Act to a competent Court. It was and it is the case of the petitioner that he never accepted the award. An application, therefore, was maintainable before the Land Acquisition Officer as the acceptance of amount offered by the Land Acquisition Officer would not preclude the petitioner from raising a dispute and getting the matter referred to a competent Court in accordance with the provisions of law.

#. Very recently, in Special Civil Application No.7063 of 1993, we have considered a similar question. In that case also, an application filed by the land owner was rejected by the Land Acquisition Officer on the ground of limitation. It was also observed that when the

amount was awarded to him under the award, he accepted said amount without objection. Only after the prescribed period was over, he made an application which was time barred. Considering the relevant provisions of the Act as also decisions of the Hon'ble Supreme Court as well as of this Court, we held that if the person interested in the land does not accept the award, he can make an application to get the matter referred to a competent Court. In the instant case, the application is not rejected on the ground of limitation and the only ground which weighed with the second respondent was that the petitioner accepted the amount of award. It is hardly a ground for rejecting the reference. Hence, the order requires to be quashed and set aside.

#. For the foregoing reasons, the petition deserves to be allowed and is accordingly allowed. The order passed by the Special Land Acquisition Officer, Unit No.1, Vadodara in Land Award Case No.51 of 1983 dated May 8, 1986 is hereby quashed and set aside and it is directed that he will pass an appropriate order in accordance with law. Since the matter is very old, the authorities are directed to pass an appropriate order as expeditiously as possible. In the facts and circumstances, no order as to costs.

Sd/-

(C.K.Thakkar,J.)

Sd/-

12-1-1998 (R.P.Dholakia,J.)
radhan